

1 IN THE UNITED STATES DISTRICT COURT
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3 EASTERN DISTRICT OF TENNESSEE
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5 AT KNOXVILLE
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UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	
	:	
v.	:	3:16-CR-20
	:	
MARK HAZELWOOD,	:	
SCOTT WOMBOLD,	:	
HEATHER JONES, and	:	
KAREN MANN,	:	
	:	
Defendants.	:	

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11 Chattanooga, Tennessee
12 February 14, 2018
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14 BEFORE: THE HONORABLE CURTIS L. COLLIER
15
16 APPEARANCES:
17 FOR THE PLAINTIFF:
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JURY TRIAL
TWENTY-SIXTH DAY OF TRIAL

UNITED STATES DISTRICT COURT

Case 3:16-cr-00020-CLC-HBG Document 516 Filed 03/09/18 Page 1 of 12 PageID #:
13251

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UNITED STATES DISTRICT COURT

Case 3:16-cr-00020-CLC-HBG Document 516 Filed 03/09/18 Page 2 of 12 PageID #:
13252

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UNITED STATES DISTRICT COURT

Case 3:16-cr-00020-CLC-HBG Document 516 Filed 03/09/18 Page 3 of 12 PageID #:
13253

1 (Recess for deliberations.)

2 (The jury entered the courtroom, and the proceedings
3 continued as follows:)

4 THE COURT: Ladies and gentlemen, as you can see,
5 it's a few minutes after noon. I'm going to release you for
6 lunch now and ask you to return roughly at 1:00. And remember
7 my admonitions I've given you earlier. So the jury is released
8 for lunch now. Thank you.

9 (The jury exited the courtroom, and the proceedings
10 continued as follows:)

11 THE COURT: Be seated. We received a communication
12 from the jury earlier. The Court drafted a proposed response
13 and had it circulated to the attorneys.

14 Ms. Lewis, what time do you have to leave?

15 THE COURTROOM DEPUTY: I'll stay as long as you want
16 me to, Judge Collier. I mean, I'm going to be leaving at 1:00,
17 but --

18 THE COURT: At 1:00. I meant to tell the jury, so
19 they could say good-bye to you, and I forgot. I apologize.

20 Ms. Lewis has an engagement this afternoon.

21 Is it a child?

22 THE COURTROOM DEPUTY: It's my granddaughter.

23 THE COURT: One of her granddaughters has a program
24 at school, and was insistent on her presence. Ms. Lewis is
25 going to be taking leave and going there, and I wanted the jury

1 to understand that they may not be seeing her again, and the
2 reason was because she had a family commitment.

3 So, I'm sorry, Ms. Lewis, for that.

4 THE COURTROOM DEPUTY: Thank you, Judge Collier.

5 The Court circulated a proposed response to the
6 attorneys. And looks like the government made one correction;
7 the Court said "mail fraud" in the proposed communication, and
8 that should say "wire fraud." And Mr. Hazelwood and Ms. Mann
9 were okay with the proposed instruction.

10 And Ms. Jones has some reservations. Is that
11 correct?

12 MR. VERNIA: Yes, sir.

13 THE COURT: Okay.

14 (Brief pause.)

15 MR. VERNIA: Thank you, Your Honor. Trying to read
16 between the lines in the jury's question, and it appears that
17 they may be cross-pollinating a little bit between the
18 conspiracy instructions and the substantive wire fraud
19 instructions. And I guess my concern is that although the
20 Court's proposed statement, with the government's correction,
21 is certainly a correct statement, it may not adequately focus
22 them on the pages in the instructions that are particularly
23 relevant to the substantive counts. And those are Pages 27 to
24 34. So I think our proposal would just be to include a
25 reference to -- you know, essentially saying, for those

1 substantive wire fraud counts, the -- "In addition to all the
2 instructions, you should particularly focus on those on Pages
3 27 to 34."

4 THE COURT: Anyone object to that?

5 (Brief pause.)

6 MR. HAMILTON: Not as -- not as described. The
7 United States would appreciate knowing how the Court plans to
8 insert that language in there, because I -- the United States
9 does believe that the way in which the Court closes out the
10 instruction by saying that the instruction should be considered
11 as a whole is always an important instruction to give the jury.

12 THE COURT: 24 and what? Pages --

13 MR. VERNIA: 27 to 34, Your Honor.

14 THE COURT: I would suggest, then, that between the
15 last sentence and the next-to-last sentence we add this
16 sentence: "For the substantive wire fraud counts," comma,
17 "refer to Pages 27 through 34."

18 MR. VERNIA: That would be fine with us, Your Honor.

19 MR. HARDIN: No objection.

20 MR. HAMILTON: No objection, Your Honor.

21 THE COURT: Very well. We will make that change,
22 then, and we will have it provided to the jury when they come
23 back.

24 This may be moot now. Just as the Court was
25 prepared to take the bench, we received another communication

1 from the jury, and it has a 12:00 time on it. It reads as
2 follows: "The jury would like to let the Court know we have
3 reached decisions on all but one count on one person. Please
4 advise what to do if we are not unanimous in our decision."

5 "The jury would like to let the Court know we have
6 reached decisions on all but one count on one person. Please
7 advise what to do if we are not unanimous in our decision."

8 Any thoughts on a response?

9 MR. HARDIN: I guess my-- Go ahead.

10 MR. HAMILTON: We'd like to hear from counsel for the
11 defense first.

12 MR. HARDIN: Yeah, I want to hear from them, because
13 I don't know quite what to suggest as a response. The problem
14 I have, at the end of that, are they talking -- or they only
15 have a problem with the one count they haven't agreed on? Are
16 they saying they're unanimous to the other three and not
17 unanimous as to the only one? I suspect that's what they mean,
18 but that's not what the language clearly says. I don't -- I
19 think we're going to probably have to, if it's okay with the
20 Court, take five minutes to figure out among ourselves if we
21 have a unified position.

22 THE COURT: Very well. The Court did not have an
23 opportunity to copy the instruction. The Court will do that --
24 I'm sorry, the communication. The Court will do that and
25 provide it to counsel, and then counsel can give some thought

1 to what we should do.

2 Considering the length of the trial and also
3 considering the amount of time that's transpired since we
4 first started and the complexity of the case, they really
5 haven't been deliberating all that long. They deliberated all
6 day on Monday. They have not deliberated all day today.
7 They've deliberated just, what, three hours last week? So
8 they've actually only deliberated for less than two days.

9 MR. HARDIN: (Moving head up and down.)

10 THE COURT: So with respect to that last statement by
11 them, I would suggest that part of whatever we send back would
12 be, "You should continue your deliberations in an effort to see
13 if you can't reach a unanimous decision."

14 MR. HARDIN: We would have no objection to that
15 instruction.

16 MR. VERNIA: No objection, Your Honor.

17 MR. HAMILTON: Before the United States states a
18 position on this, we'd just like to see or hear again the
19 communication. And also, Your Honor, I just want to point
20 out --

21 (Off-the-record discussion between government
22 counsel.)

23 MR. HAMILTON: So we've had two and a half days,
24 just-- We were here on Monday and Tuesday.

25 THE COURT: I'm sorry, today's Wednesday, not

1 Tuesday. Okay.

2 MR. HAMILTON: I just wanted to make that
3 observation.

4 THE COURT: So we've had less than three days, then.

5 MR. HARDIN: Yes, sir.

6 MR. HAMILTON: Yes, sir. So -- but if we could just
7 have a few moments to consider our position on this after
8 either hearing or seeing the communication again.

9 THE COURT: We'll have the communication forwarded to
10 you, then, shortly.

11 MR. HAMILTON: Thank you.

12 THE COURT: And, Ms. Lewis, you're free to take off.
13 And enjoy yourself. Spend time with that granddaughter.

14 THE COURTROOM DEPUTY: Thank you.

15 (Luncheon recess.)

16 (Recess for deliberations.)

17 (The proceedings were held outside the presence of
18 the jury, as follows:)

19 THE COURT: The earlier communication has gone back
20 to the jury. And we can address now the latest communication,
21 and that is, what do they do if they cannot reach a unanimous
22 decision.

23 We've received a proposal from the government that
24 the Court instruct them on partial verdicts. The Court had
25 indicated that it was thinking of providing something, and the

1 Court has put on paper something along those lines, and it
2 reads, "You have asked what you should do if you are not
3 unanimous as to one count on one defendant. It is common for
4 juries to encounter some difficulty in reaching unanimous
5 agreement. Considering the length of this trial and the
6 nature of the evidence, the amount of time you have spent
7 deliberating is not out of the ordinary. You should continue
8 your deliberations in an effort to reach a unanimous
9 decision."

10 And I also take it from some of the communications
11 that at least one, if not more, of the defendants would be
12 opposed to a partial verdict. Is that right?

13 MR. HARDIN: Correct, Your Honor.

14 MR. KELLY: Yes, Your Honor.

15 MR. HARDIN: I believe it's all the defendants, Your
16 Honor.

17 THE COURT: I'm sorry. So all the defendants are
18 opposed to a partial verdict, then.

19 Mr. Hamilton?

20 MR. HAMILTON: The United States respectfully
21 suggests that both should be provided, both the Court's
22 instruction and as well as 9.03. 9.03 contemplates this
23 situation. As we pointed out, the use note says that this
24 instruction should be used if the jury has asked about,
25 attempt to return, or otherwise indicate that they may have

1 reached a partial verdict.

2 And this communication to the Court at 12:00 p.m.,
3 in the government's view, makes it pretty clear that they
4 have -- that they are indicating that they have reached a
5 partial verdict with respect to all but one of the counts with
6 the exception of one defendant. And so what 9.03 does is, it
7 just gives them options, it lets them -- it doesn't tell them
8 what to do, it just lets them know that they don't have to
9 wait until the end, it's up to them, it's their choice, and it
10 asks them to continue their deliberations.

11 And the United States would respectfully suggest
12 that where -- Paragraph 4, where the pattern instruction says,
13 "I would ask you now return to the jury room and resume your
14 deliberation," that that be the point at which the Court
15 insert what the Court just advised us it had drafted in answer
16 to the question of "what to do if we are not unanimous in our
17 decision." It seems to me that both are appropriate, both the
18 partial verdict pattern instruction as well as the language
19 that the Court had drafted to encourage them to continue their
20 deliberations.

21 THE COURT: I take it, though, you don't have any
22 objection, then, to what the Court has proposed.

23 MR. HAMILTON: That language, no, sir.

24 THE COURT: Does anyone else have any objection to
25 what the Court has proposed?

1 MR. VERNIA: Not to the Court's language, Your Honor.

2 MR. KELLY: No.

3 MR. HARDIN: No.

4 MR. COOPER: No, Your Honor.

5 THE COURT: The Court will consider the partial
6 verdict instruction at a later point. I think, though, at this
7 time the Court will merely send back to the jury its
8 instruction that their time has not been inordinate, and that
9 they should just continue trying to reach a decision.

10 Ms. Hinton.

11 THE COURTROOM DEPUTY: Yes, Your Honor.

12 THE COURT: This is the Court's communication. Make
13 a copy of it and share it with counsel, and then provide that
14 to the jury.

15 THE COURTROOM DEPUTY: Okay.

16 (Recess for deliberations.)

17 (The jury entered the courtroom, and the proceedings
18 continued as follows:)

19 THE COURT: Ladies and gentlemen, it's near 5:00, so
20 I'm going to release you for the day. And I'll ask you to
21 return tomorrow morning at 9:00 to resume your deliberations.

22 Again, remember my earlier admonitions regarding
23 television, the Internet, radio, and newspapers.

24 Ms. Hinton.

25 (Evening recess.)